

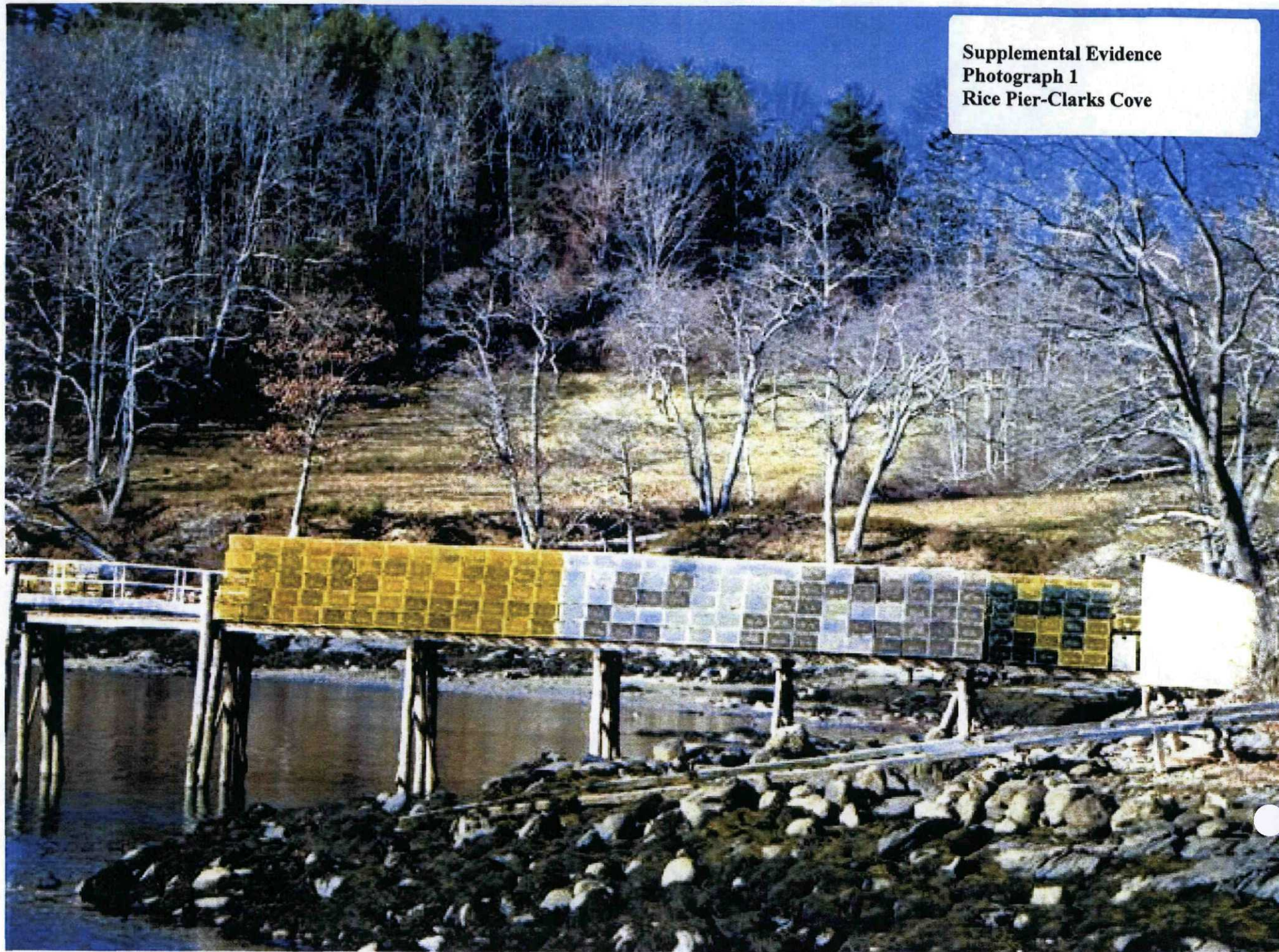
DAVID E. RICE

Natural Resources Protection Act

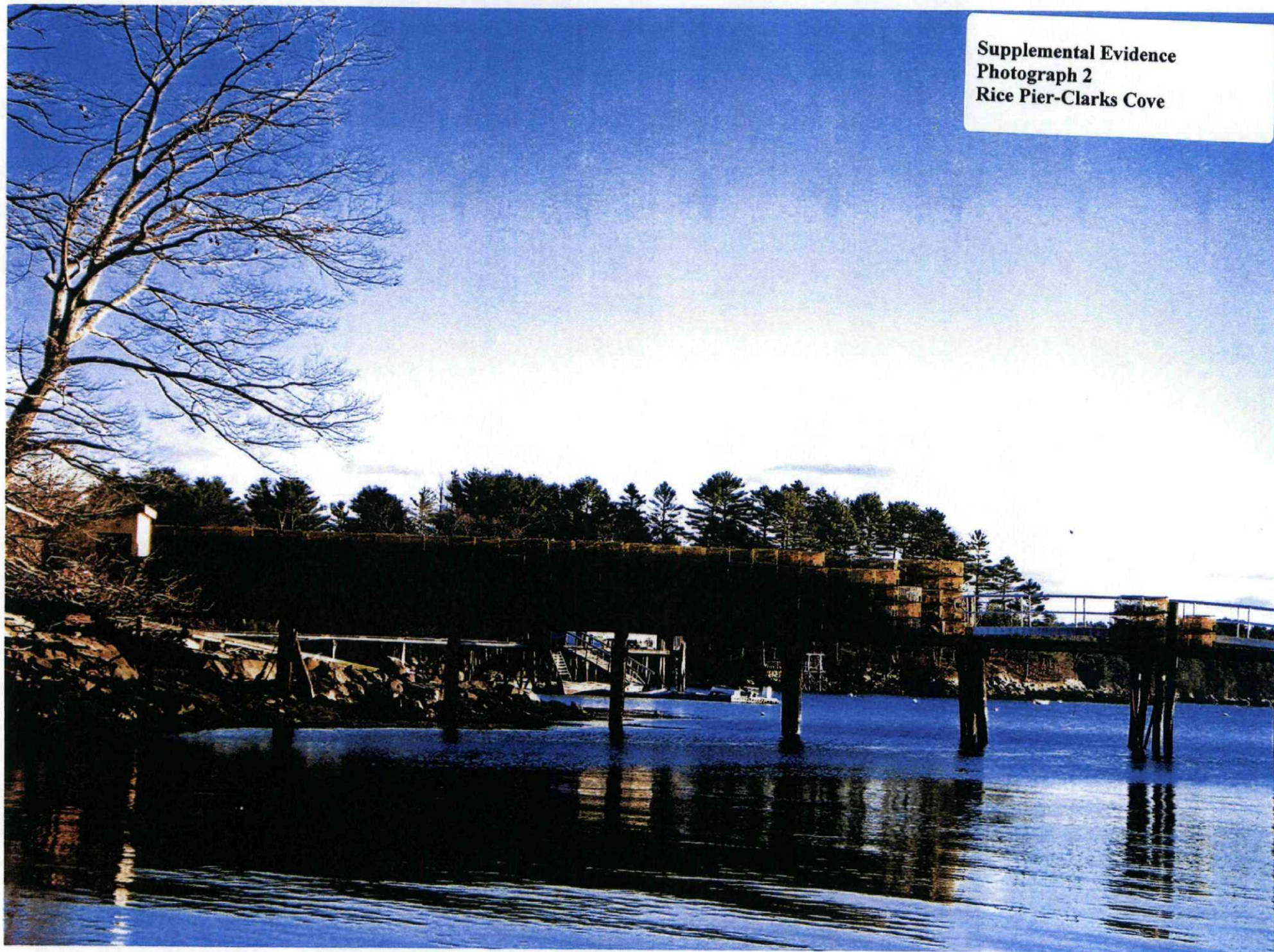
Removal of Special Condition #5 – South Bristol

INTERESTED PERSONS CORRESPONDENCE

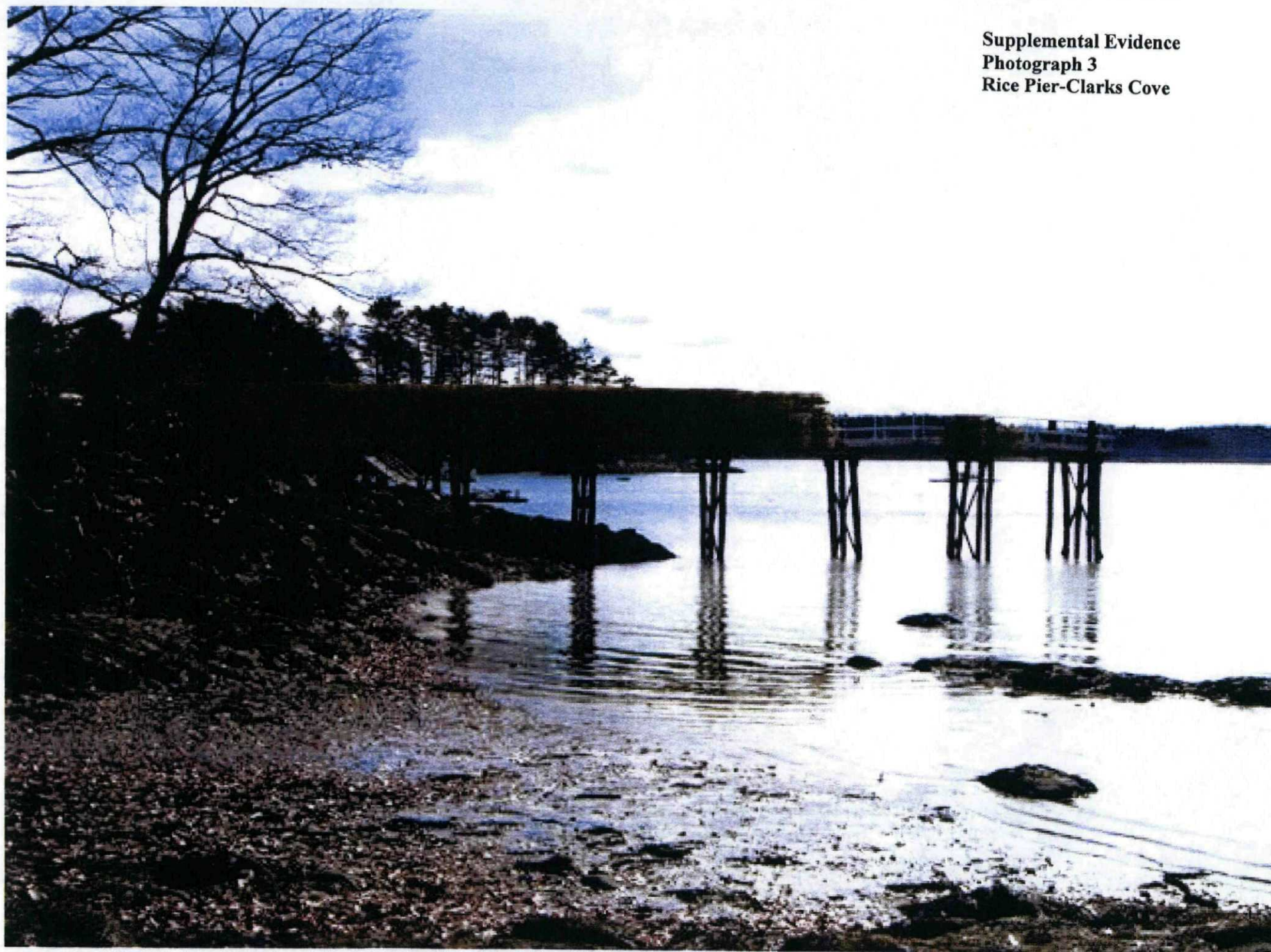
Supplemental Evidence
Photograph 1
Rice Pier-Clarks Cove

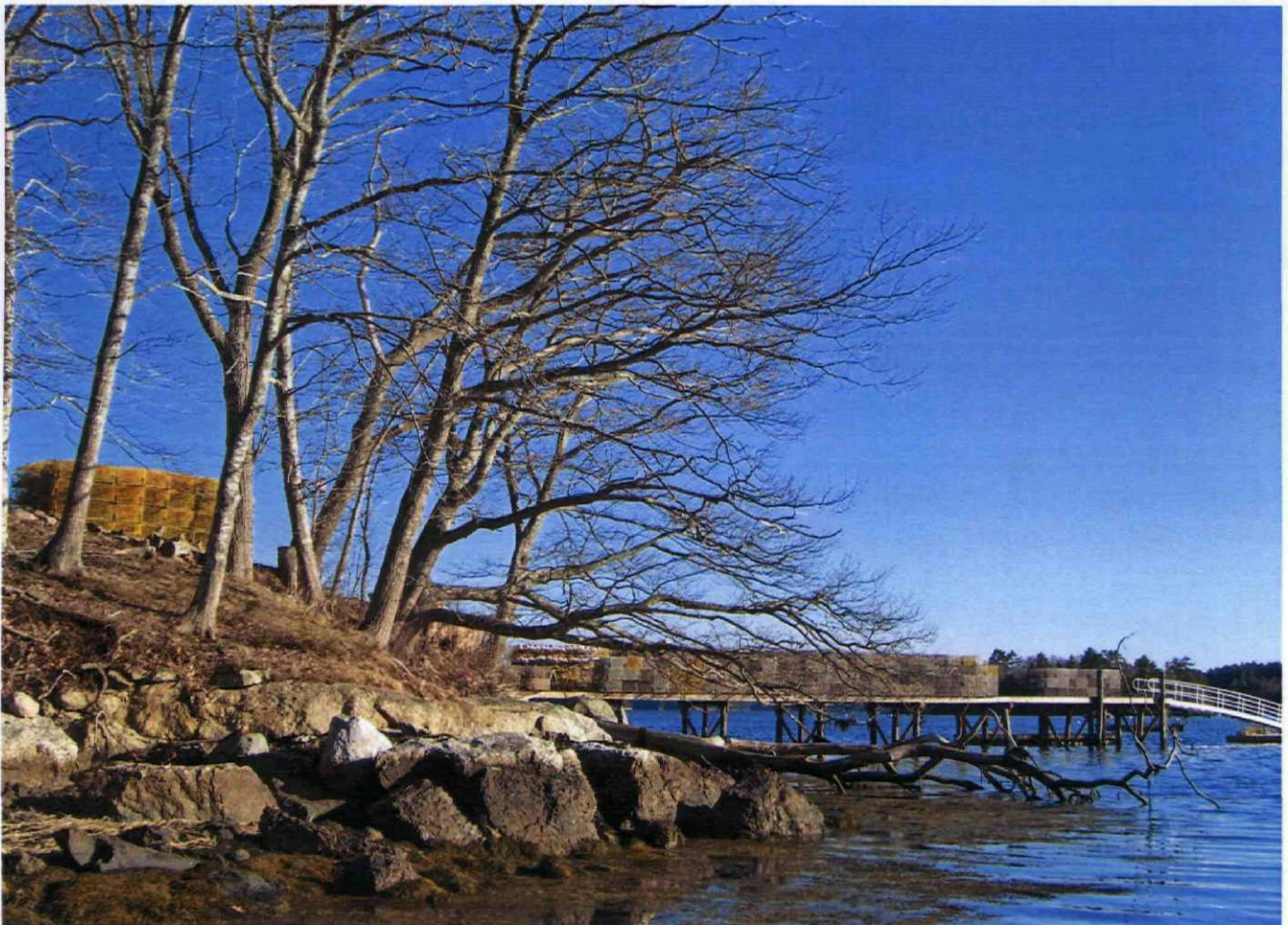


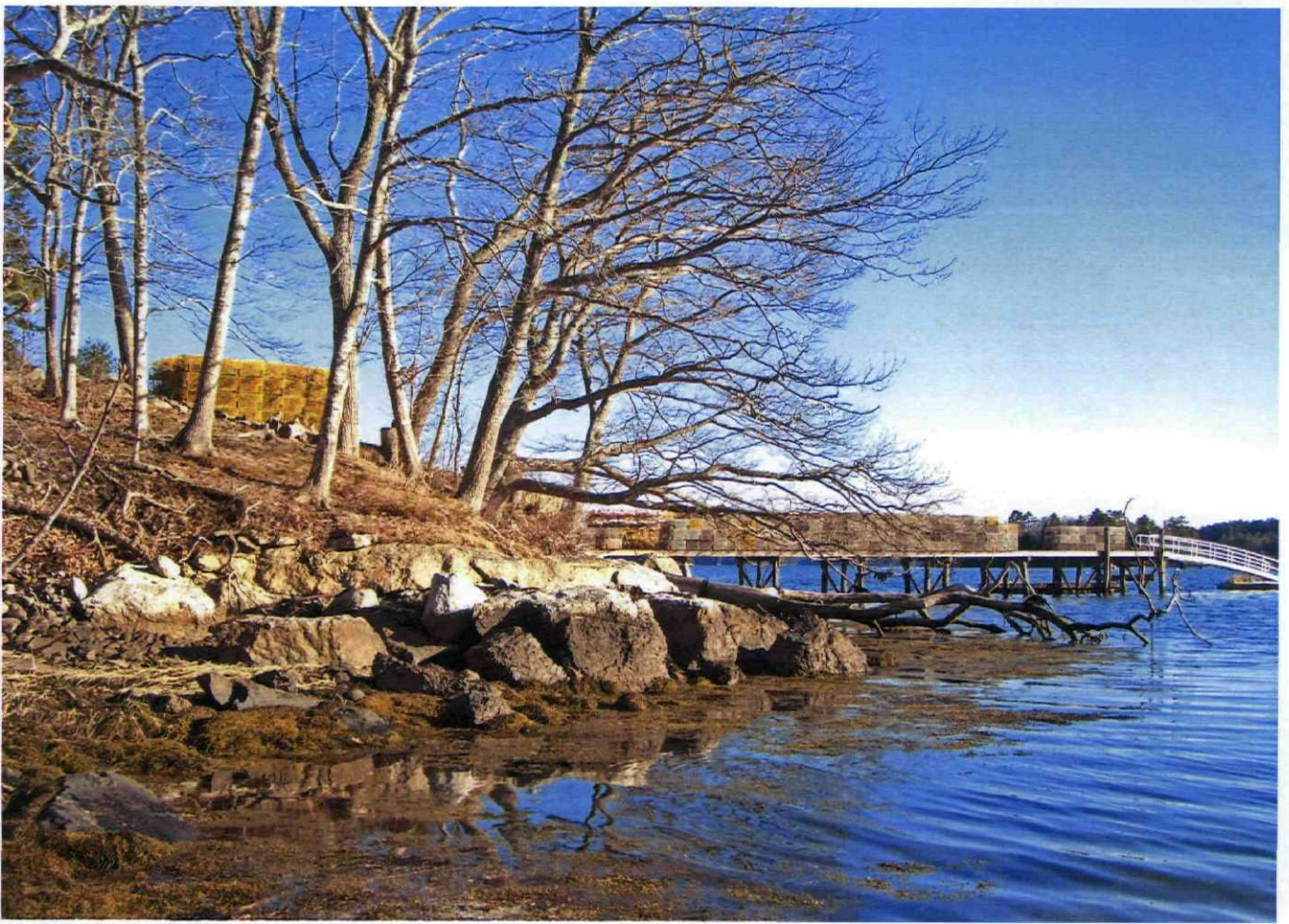
Supplemental Evidence
Photograph 2
Rice Pier-Clarks Cove



Supplemental Evidence
Photograph 3
Rice Pier-Clarks Cove







From: Dirk & Linda Brunner [brunners@tidewater.net]

Sent: Monday, July 20, 2009 11:19 AM

To: Callahan, Beth

Subject: Re: NRPA Application L-23697-4E-B-M, David Rice, South Bristol

We received and read portions of the subject Minor Revision Application and submit the following comments for your consideration regarding this request for an exemption of the stated DEP policy to not allow activities to occur on a pier that are not water dependent. Such a policy was referred to by the DEP in their explanation of the need for Condition 5 - No Trap Storage on the approved pier. Removing or deleting Condition 5 would represent a major change in how the Department implements its policies. We believe the condition should remain, not only to comply with the Department Policy, but also for visual impact and environmental shading reasons.

Background: Late Winter 2009, the applicant transferred by March 16 most of his 600 traps from land storage to the pier in a period of a week or less. The subject application states that in early Spring the application notified you at the DEP of his intent to move his traps to his pier. These traps remained on the pier through April, May, and into June, a period of a quarter of a year, with no visual appearance of transfer to the water until late Spring. After several visits to the pier beginning in April by Eric Ham of the Department, who had discussed the need to limit trap storage to one week or less, all traps were finally removed from the pier by July 2 (nearly 4 months after traps were initially placed on the pier).. This period of one week seems reasonable and is the current practice, as it has been for decades, at the adjacent commercial wharf where 3 to 4 other fulltime lobstermen willingly and successfully operate.

Water Dependent Use. There is no question that loading and unloading of traps between a lobster boat and land requires the use of a pier. However, cleaning, repair, and maintenance of traps, especially at the beginning of the season (i.e., before placing in water in June or July) does not require access to water and in fact may be better done on land where wastes and debris (including overspray, wire, plastic rope, and plastic trap materials) from such activity does not fall directly into the water. The land offers a buffer zone to protect the coastal wetlands and marine environment from these wastes and debris.

Trap line assembly does not require storage on a pier for more than a few days, if at all since this activity can be accomplished on board the boat. Trap lines assembled on a pier require off-loading directly from the pier to the boat during the few hours around high tide or dragging the assembled traps down the ramp to the float and then to the boat. Certainly the 3 to 4 lobstermen operating at the commercial wharf find the practice of less than 1 week storage to be acceptable, reasonable, and practical.

Pier Design. The design and configuration of the approved pier is not relevant to the issue of water dependent use and trap storage on the pier. The applicant chose to construct a storage shed on the pier, even though a land-based one would have less impact on shading of the marine environment. Access to the pier was made convenient by the applicant via a few steps and a trap chute to allow movement of traps to and from the pier. A flat working surface can readily be provided on the land and does not require use of the pier. Storage of traps, especially large numbers during early Spring and Late Fall where the sun angle becomes shallow aggravates the shading of the marine and coastal wetlands environments.

Winter Trap Storage. Storage of traps on the pier during winter months is unacceptable as it is contrary to Department policy, is highly visible to abutters and public, and creates unnecessary shading of the marine environment and coastal wetlands. By definition, winter storage of traps is not a water dependent use; the traps are not in the water and will not be returned to the water for many months. Immediate or even short time access to the water is not needed to store traps through the winter months from late November when traps are removed from use as lobsters begin to move off-shore through early June when lobsters begin to return to coastal waters. Traps stored on the pier are visible from our residence, especially during winter months when there are no leaves on deciduous trees. Furthermore, the land on the southern side of the cove is used for hiking, cross-country skiing, and snowshoeing activities by the public as well as the landowners. Winter storage of traps is also visible from the Rounds-McVicker property to the east of the pier when similarly used by the public. The angle of the sun is particularly low during winter months. Storing traps on the pier will only aggravate the shading that occurs from the pier itself.

Supplemental Information 07-02-09 - Typical Trap activity on Pier. The activities described in March, April, May, and into June are not water dependent activities. They can be completed on land. As the commercial lobstermen at the adjacent wharf seem to manage quite well, assembly of trap lines can be done in the few days before the traps are being deployed or done onboard. Assembled trap lines do not need to be stored on the pier for weeks or even months. Similarly, the activities described for late November, December, January, and February are not water dependent uses of the pier. Winter fishing activity, if it is done at all, does not require the storing of 600 traps on the pier.

Summary. We strongly urge you and the Department to uphold the Department policy and retain and continue to enforce Condition 5 of the subject pier permit.

Respectfully Submitted,
Dirk and Linda Brunner
331 Clarks Cove Road
Walpole, ME 04573
563-3915

----- Original Message -----

From: Callahan, Beth

To: Dirk & Linda Brunner

Sent: Monday, July 13, 2009 7:56 AM

Subject: RE: NRPA Application L-23697-4E-B-M, David Rice, South Bristol

Dear Mr. Brunner,

As a matter of policy and cost-saving measures, the Department does provide copies of its Department files. However, all of the Department's files are open to the public for viewing at the DEP's office in Augusta, including the pending application that you are interested in. Please make an appointment to view the file so that a viewing area can be arranged for you. You are welcome to make copies of the Department's file at that time. The fee is \$0.15 per page. As another option, you can contact LeBlanc Associates and request a copy of the application from him.

Thank you,

BETH CALLAHAN

Project Manager

ME Dept. of Environmental Protection

Division of Land Resource Regulation

From: Dirk & Linda Brunner [mailto:brunners@tidewater.net]

Sent: Sunday, July 12, 2009 9:49 PM

To: Callahan, Beth

Subject: NRPA Application L-23697-4E-B-M, David Rice, South Bristol

Thank you for your letter dated July 9 and received July 11, 2009.

It was interesting to learn a request pertaining to trap storage was submitted by LeBlanc Associates on behalf of David Rice. As you have copied LeBlanc Associates on your letter of July 9, could you please forward a copy of the NRPA minor revision application?

I would also like to restate some comments made during the public review of Mr. Rice's application for the dock.

1. Lobster fishing has been an ongoing activity in Clarks Cove for several decades. For the past several years, there have been three to four lobstermen operating from the Myers wharf in Clarks Cove. None of these lobstermen store traps on the wharf for more than 3 to 5 days. Yet all of these lobstermen make a good living and return to the Cove each year to continue to fish. This decades long tradition of no trap storage on the wharf is strongly supported by the people who live along the shore of Clarks Cove.
2. Over the past three decades, the Cove has changed from an unspoiled area with limited commercial fishing activity to being a home to several aquacultural activities and to four to five fishing boats and associated floats. This balance of multiple waterfront uses was further shifted away from a quiet, scenic cove with the Department's approval of the Rice dock.
3. The visual impact of trap storage on the Rice Dock would further shift the balance toward working waterfront and away from aesthetic marine views of forest and field waterfront shoreline enjoyed by hundreds of visitors each year..
4. Given that trap storage is not an activity that must be done on the dock with immediate access to water, it is strongly encouraged that condition 5 not be deleted or modified to allow trap storage for more than a few (3 to 5) days to accomplish routine repair and maintenance of traps.

I look forward to receiving a copy of the minor revision application. Please let me know of the department's decision when it is made.

Regards,

Dirk Brunner

331 Clarks Cove Road

Walpole, ME 04573

563-3915

Mr. Jeffrey G. Madore, Division Director
Division of Land Resource Regulation
Bureau of Land and Water Quality
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 State House Station
Augusta, ME 04333-0017

July 27, 2009

CERTIFIED RETURN RECEIPT REQUESTED

RE: DEP NRPA Application #L-23697-4E-B-M, David Rice, South Bristol

Dear Director Madore,

We have recently heard that David Rice has submitted an application for a revision of his permit to build and operate a dock in Clarks Cove. After consulting the text of the application, we have concluded that nothing new has occurred that would justify such a revision. Nothing has changed either in the conditions of usage of Mr. Rice's dock or in the principles or policies governing the DEP's permitting process.

In David Rice's initial application in 2007, the applicant stated as one of his "needs" the storage of lobster traps on his 110 foot-long pier which also justified the 12 foot width of that pier. The DMR obviously disagreed with this stated "need" when it recommended, as regards this project, that the 12 foot width be reduced because such a width would cause excessive shading. The DEP addressed the issue more directly and explicitly in the permit they granted in September, 2008 wherein it was clearly stated on page 2 that trap storage was "not a water dependent use" nor a recognized use of a structure occupying environmentally protected wetlands, and that consequently David Rice, as per condition #5 of the permit, would not be allowed to store his traps on the pier.

It is to be noted that during the two year long controversy David Rice did not once object to the DEP's restriction on trap storage even though the subject and the restriction were raised repeatedly. He had every opportunity to argue the issue but didn't, hoping perhaps to avoid any conflict with the DEP and any declaration of his real intentions, which might have caused controversy and opposition.

Now that David Rice has his pier, those intentions are clear. He has accepted the DEP's authorization to build a pier, but he has never accepted the *conditions* of that authorization. This is duplicitous behavior, to say the least. What is clear is that David Rice intended simply to ignore that part of the law that inconvenienced him. And we find it more than perverse for him to suggest that the abutters are more at fault for *pointing out* the violation than David Rice is for *committing* the violation. It is also a little surprising to see that the one condition imposed on Mr. Rice for building his dock is now re-emerging as the object of a so-called "minor revision."

In order to support this new request, David Rice has created a largely fictional description of the "typical trap activity" on a dock. This description largely defines out of existence the idea of off-season storage, since there *is* no off season! According to this "typical activity" scenario, for twelve months of the year, David Rice is constantly at work repairing, cleaning, maintaining,

preparing, readying, assembling, etc. Apparently, he is "repairing" his traps in December, in January, in February, in *every month* throughout the winter, including May ... six months of constant repairing. Most lobstermen find extra work to fill out the winter months, but Mr. Rice, whose traps are evidently in very bad condition, must work all winter long and, during that time, his traps must be readily accessible to his boat which is *not being used!*

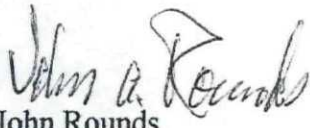
The reality is that there *is* a time for storage ... a long period of inactivity which makes it unnecessary and even undesirable to keep traps on a pier. They are less secure, less accessible in the confines of a stacked-up pier, and more exposed to the elements than they are on shore. And from an environmental point of view, maintenance activity ashore is certainly less polluting than similar activity carried out above the water. Also, in David Rice's case, there is even less excuse for not moving the traps ashore since he has the right to keep them on the adjoining property and has even designed his pier with a ramp to facilitate that transfer.

Finally, we consider trap storage undesirable in its effect on the Clarks Cove environment. Biologically, it increases the shading effect of the pier on the wetlands and it adds to the effective pollution of the water, especially to the extent that it involves increased maintenance activity on the pier. Scenically, the storage function adds to the commercial (in the worst sense of the word) aspect of the Cove and detracts from the picturesque character that makes the Cove so attractive to the many visitors coming both from land and from sea. Trap storage also considerably increases the volume and opacity of the pier, blocking views of shorelands and of the River itself. The pictures submitted by the Applicant are carefully designed to minimize the visual impact of this highly visible dock which was the initial source of much of the opposition to the dock project and which is certainly aggravated by the presence of a mass of traps being stored there.

Contrary to what David Rice indicates in his application for revision, the house of the immediate right abutter, John and Athar Rounds, is fully winterized and is occupied in the winter (this property is not to be confused with the McVickar-Rounds property abutting the Rounds property on the right).. The view of the islands and the water from the Rounds shorefront (tax lot #5) is severely compromised by the presence of a mass of traps on the pier, as evidenced by photograph #1 enclosed, which was submitted on April 17, 2009 at the time of the original complaint against Mr. Rice for massive trap storage on the pier in violation of the conditions of his permit. This trap storage violation lasted almost four months (photograph #2 enclosed shows the view without trap storage on the pier).

I am also enclosing for your information a hard copy of an e-mail sent to Ms. Callahan by other concerned residents of Clarks Cove, Dirk and Lind Brunner.

Respectfully yours,


John Rounds


Athar Rounds

cc: Ms. Beth Callahan, Project Manager
cc: Mr. Eric Ham, Enforcement and Field Services

Encl: 2 photographs; copy of letter from Dirk and Linda Brunner

Photograph #1 view from Rounds shorefront



Photograph #2 View from Rounds Shorefront



Callahan, Beth

From: A. Carolyn Pavis [acpavis@hotmail.com]
Sent: Sunday, February 07, 2010 7:44 PM
To: Littell, David P
Cc: Madore, Jeff G; Callahan, Beth; Cassida, James; Mullen, Mike; Ham, Eric
Subject: trap storage on pier in violation of terms of permit

To the attention of Commissioner David P. Littell

February 8, 2010

Reference: DEP NRPA Permit #L23697-4E-B-M, David Rice, South Bristol

Since the completion of David Rice's Clarks Cove dock in September of 2008, this dock has rarely been without a massive load of lobster traps in storage. This has been true both in season and out. Starting with our submission of a photo taken in November of that year (two months after its completion), showing hundreds of traps on the dock, you have received notice of their presence in March '09, April '09, May '09, June '09, December '09, January '10 and, most recently, in February '10.

And yet, in the very first decision to grant Mr. Rice a permit to build his dock (September '08) the DEP stated very clearly that "storage" of traps on this dock was not an option, and, based on the well-established principle that trap storage is "not a water dependent use," was, therefore, not to be allowed. That principle was never debated nor contested by anyone involved (including David Rice himself) in the various cases that were brought, until June '09 when Mr. Rice suddenly decided to ask for a change in the conditions of his permit, even though nothing had changed either in his personal situation or in the working conditions in Clarks Cove which would justify such a modification. The fact that he is now contesting this restriction is particularly surprising.

So it is disturbing that more than 7 months after his request was made, the DEP still has not made a decision concerning this matter, confirming clearly the conditions imposed on the permit as granted. It would seem that the only reason for hesitation in coming to a decision might be that some extraordinary circumstance of the applicant had come to light, which is not the case. In fact, the only thing extraordinary about David Rice's situation is that his dock is located adjacent to a property where he could easily, and legally, store all his traps, approximately 60 feet from where he is presently storing them illegally!

Or another reason for this delay might be that the DEP is actually considering reversing its long-standing position concerning the issue of lobster trap storage. This would be especially surprising in that the very considered decision to bar David Rice from storing traps on his dock was made rather recently. It was also made on the basis of protecting the marine environment from any unnecessary encroachments (a principle difficult to argue against). And it would represent a compromise of an established principle of the DEP in response to an individual case whose merits are particularly unconvincing with regard to such an important modification (how many other judgments would have to be reversed in the face of such a precedent?).

Meanwhile, we in the community are living with what we feared from the very beginning: an unnecessarily massive dock protruding into the harbor and made even more intrusive by a wall of lobster traps stored high in the air for everyone to see. Although this situation, an obviously illegal one, has existed for over a year now and has been the subject of many letters to the DEP, virtually nothing has been done about it. No penalties have been imposed, and no deadlines or ultimatums have ever been evoked.

It is being said more and more in this country that people are losing confidence in institutions and in their government. We too, although not totally disillusioned, are finding ourselves being pushed in that same direction, very much against our will or inclination. All that we can say is that it is a very uncomfortable position to be in,

Sincerely,

2/12/2010

John A. Rounds and A.C. Pavis-Rounds

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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

DAVID E. RICE
South Bristol, Lincoln County
COMMERCIAL PIER, RAMP, & FLOAT
L-23698-4E-A-A (approval)

) NATURAL RESOURCES PROTECTION
) COASTAL WETLAND ALTERATION
) WATER QUALITY CERTIFICATION
) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has reconsidered the decision it made on August 11, 2008 on the application of DAVID E. RICE after consideration of comments received from interested abutting property owners and in consideration of the full licensing record, including the applicant's supportive data, agency review comments, and all other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: The Department received a Natural Resources Protection Act (NRPA) application on June 1, 2007 for a proposal to construct a pile supported commercial pier system which included a seasonal ramp, a seasonal float, a combination trap chute and access stairs, platform, and equipment shed. The application was found to be acceptable for processing on June 15, 2007. During the Department's review of the application, numerous letters from interested abutting property owners ("abutters" or "appellants") within the community were sent to the Department that describe specific concerns associated with the proposed project. Twelve residents from the town requested that a public hearing be held on the application. The Department determined there was insufficient conflicting technical information regarding the licensing criteria to warrant a public hearing. However, all written comments were considered by the Department during review of the application. In Department Order, #L-23698-4E-A-N, dated October 11, 2007, the Department approved the construction of the commercial pier system and its associated structures. The project site is located off Clarks Cove Road in Clark Cove on the Damariscotta River in the Town of South Bristol.

On November 9, 2007, appellants filed a petition for review of the Department Order with the Lincoln County Superior Court. The appellants brought to the Department's attention additional information related to the application analysis that had not been before the Department during its review of the application. In order to consider and

review this new information, the Department requested that the court remand the matter back to the Department. On February 25, 2008, the court remanded the matter to allow the record to be re-opened to give the Department the opportunity to consider new information from both the appellants and the applicant.

On August 1, 2008, the Department sent a draft decision of Department Order #L-23698-4E-A-M to all interested parties. All interested parties were asked to submit comments on the draft decision by no later than August 8, 2008. A final Order was issued on August 11, 2008. Due to a clerical error on the Department's part, the appellants state that they did not receive the draft decision before the deadline and were unable to comment on the draft decision before final issuance. To address this issue, the Department agreed to reconsider the August 11, 2008 decision. The appellants were allowed until August 29, 2008 to submit written comments to the Department. On August 25, 2008, appellants submitted comments for the Department's consideration.

B. Summary of Application: The applicant proposes to construct a 12 foot wide by 110 foot long pile supported pier for the purpose of operating the applicant's commercial lobster fishing business. In order to construct the proposed pier, approximately 21 piles will be driven by a pile driver with a crane attachment from a barge; the pier will be pinned to ledge rock. The applicant will access the pier by land to construct the decking of the pier. A 4 foot wide by 34 foot long seasonal wooden ramp will lead from the pier to a 20 foot wide by 12 foot long seasonal wooden float. Additional aspects of the pier system include a 6 foot wide by 6 foot long access platform, 4 foot wide by 14 foot long combination access stairs and trap chute, and an 8 foot wide by 10 foot long by 10 foot high equipment shed to be placed at the easternmost end of the pier abutting the shoreline. Details of the proposal can be seen on Exhibit 2 of the application, entitled "Proprietary Drawing". The ramp and float will be constructed off site and then towed to the project site once construction of the pier, platform, and access stairs-trap chute is complete. No construction work will be done in the navigable channel. The applicant has designed the pier system to provide all-tide access and fully accommodate his commercial fishing needs. Once construction is complete, the applicant states that he will primarily access the commercial pier by means of his fishing vessel. Further, no trap storage will be permitted on the permanent pier, as trap storage is not a water dependent use. The project site is located on Clarks Cove Road in the Town of South Bristol.

C. Current Use of the Site: The site of the proposed project is comprised of approximately 0.4 acres and contains an existing residential structure. The site also contains an existing residential pier, which is roughly 4 feet wide by 24 feet long. It was constructed about 60 years ago. The existing pier will be removed prior to completion of the proposed project. The site is referenced in the Town of South Bristol's tax maps as Lot #3 on Map #28. The deed for the proposed project can be seen at the Lincoln County Registry of Deeds located in Book #2277 on Page #288.

2. TITLE, RIGHT, OR INTEREST:

The applicant demonstrated title, right, or interest in the property proposed for development by submitting a signed 10 year license agreement with the current property owner, Elinor Edlund, granting him permission to use the existing pier for commercial purposes and “the right to make repair, replacement, or improvement” of the existing pier. The license also grants the applicant the right to access the pier over the premises of the property owner and by means of a shared right of way across an abutting piece of property.

Abutters argue that the applicant’s activities associated with the proposed project would violate the intentions of the right of way. The abutters contend that the uses associated with the applicant’s commercial business would overburden the easement.

The Department considered the concerns of abutters and the license submitted by the applicant. The Department finds that the license demonstrates a right to the reasonable use of the property and adequate duration and terms for the proposed project and its associated uses sufficient for the processing of this permit application. Therefore, the Department finds that the applicant demonstrated sufficient title, right, or interest in all of the property which is proposed for development or use.

3. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site. Department staff visited the project site on June 22, 2007, July 2, 2007, and September 5, 2007 and completed the Department’s Visual Impact Assessment which evaluates various visual elements of landscape compatibility, scale contrast, and spatial dominance at a project site. The assessment worksheet indicates that the proposed project would impact the scenic quality of the resource in a negligible to weak manner.

The proposed project is located in Clark Cove on the Damariscotta River, which in general is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. However, the area surrounding the project site is developed with numerous residential structures, and the cove area is developed with commercial activities which include a shellfish aquaculture facility and an existing commercial pier that provides rental space and all-tide access to fishermen.

Abutters have expressed concerns in relation to the project’s possible impacts to scenic, recreation, and navigational uses of the area. These concerns are as follows:

- 1.) Abutters have expressed concerns that the proposed project will negatively affect the scenic view from abutting properties and the surrounding cove area, Carlisle Island, and nearby land protected by a conservation easement.
- 2.) Abutters state that the dimensions of the proposed project are out of proportion to the size of the existing commercial pier.
- 3.) Abutters contend that the proposed project would create a safety and navigational hazard within Clark Cove. Abutters are concerned that due to the dimensions of the proposed project, recreational users of the cove would not be able to view oncoming boat traffic, and swimmers and small craft users would be forced into the navigable channel.
- 4.) Abutters commented that a commercial pier is not permissible within the Clark Cove community due to its designation as a residential district by a municipal ordinance and any commercial use of the existing shared right of way would be in direct conflict with the current shoreland zoning ordinance and further be a nuisance for abutters.

With regard to the abutters' first concern, scenic quality is generally measured on a broad geographic scale and is focused on public views; therefore, visual impairments to abutting properties are not the primary factor. Carlisle Island, located approximately 3000 feet from the project site, is owned and managed by the Damariscotta River Association (DRA), a non-profit conservation land trust that specializes in the preservation and promotion of the natural, cultural, and historic heritage of the Damariscotta River. A representative from the DRA commented that the DRA is unable to draw a negative conclusion on the proposed pier's visibility from Carlisle Island. Critical natural resources and the impact of such proposals are always of concern to the DRA; however, based on the DRA's research of the project site, the proposed project will not have a significant visual impact to the scenic quality of Carlisle Island.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) holds a conservation easement on a parcel of land about 1100 feet from the project site. MDIFW staff reviewed the proposed project and conducted a visit to the project site on July 2, 2007 and a visit to the site of the easement on September 10, 2007. MDIFW commented that the proposed project would not significantly impact the scenic value of the conservation easement property. Rather, the existing aquaculture site and the numerous existing moorings and floats have more of a direct impact to the scenic value of the easement property.

Based upon site visits by the Department, the Visual Impact Assessment, and comments from DRA and MDIFW, the Department finds that the proposed project will not have a significant adverse affect on scenic resources.

With regard to concern #2 as stated above that pertains to the dimensions of the proposed project relative to the existing commercial pier nearby, the Department reviewed the proportions of both structures and finds that the dimensions of the proposed project are

comparable to the size of the existing commercial pier that is already present within Clark Cove.

Regarding the abutters' third concern, the United States Army Corps of Engineers (ACOE) reviewed the proposed project and did not identify any significant navigational or recreational issues associated with the proposed project. The ACOE issued a permit for the proposed project on July 30, 2007. The Department does not anticipate that the proposed project would significantly alter navigational uses of the area. The Maine Department of Marine Resources (DMR) reviewed the proposed project and conducted site visits on July 16, 2007 and August 9, 2007 to review any potential impacts to recreational and navigational uses. DMR stated that a mooring with a sailboat is situated approximately 75 feet from the seaward end of the proposed float, and if access to the existing mooring with the sailboat becomes hindered, the applicant should bear the cost of moving the mooring to another location. DMR also recommended that the applicant reduce the width of the proposed pier system to a smaller width. The applicant originally considered a width of 16 feet; however, the applicant determined that the overall purpose of the proposed project could be met by reducing the width of the pier, and reduced it to 12 feet in width, which is now proposed. Details of this modification are discussed further in Finding #7, Section B.

At each visit to the project site, the Department observed many commercial activities within the cove; however, no recreational activities were seen during those times.

Finally, issues regarding the compatibility of the proposed project with local shoreland zoning requirements are determined by the Town of South Bristol upon the filing of an application for approval with the town. The applicant agreed to submit to the Department a copy of a valid permit from the local permitting authority prior to the start of any construction on the project site. On December 5, 2007, the applicant submitted copies of approved municipal permits from the Town of South Bristol. The Maine Department of Conservation, Bureau of Parks and Land issued an approved submerged lands lease to the applicant on January 28, 2008.

Based on the information submitted in the application, site visits, results from the Visual Impact Assessment, and comments provided by DMR, ACOE, DRA and MDIFW, the Department finds that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area. The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

4. SOIL EROSION:

Approximately 21 piles will be needed to construct the proposed permanent pier. The piles will be driven by a pile driver with a crane attachment from a barge, and the proposed pier will be pinned to ledge rock.

The Department considered comments from abutters that the proposed project will create an accumulation of sedimentation in Clark Cove from the use or construction of the pier. Abutters feel that an increase in sediment would result in a loss of water depth and affect the frontage belonging to the abutting property on the north side of the project site. The Department was provided with photographs, maps, and documentation by abutters that illustrate potential causes of erosion and instability of the shoreline in the cove area over the course of time. These causes of sedimentation include felled trees and the natural flow of currents. Abutters also noted that an increase in sedimentation resulting in a decrease of water depth has been observed on the north side of the existing commercial pier on the south abutter's property; abutters are concerned that the proposed project may create the same effect.

DMR reviewed the proposed project and stated that no visible signs of significant erosion were observed at the site. Additionally, DMR stated that the proposed project will not have a significant impact on erosion in the cove area as long as best management practices for erosion control are utilized during construction of the proposed project. At the time of each site visit, Department staff did not observe any measure of instability of the shoreline nor a visible sign of erosion at the project site.

The Department finds that based on the construction methods proposed by the applicant and DMR's comments and provided that best management practices are utilized, the activity will not cause unreasonable erosion of soil or sediment, cause an unreasonable decrease in the stability of the shoreline, nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine environment.

5. HABITAT CONSIDERATIONS:

The applicant submitted a checklist of characteristics within the intertidal and subtidal area at the project site. Details can be seen on Appendix B of the application. The survey indicated absence of mussels, clams, marine worms, eelgrass, and lobster at the time of survey.

DMR conducted site visits to the project site and observed that the supratidal area is ledge outcrop that rises to a height of 4 feet with a vegetated bank. The intertidal area is ledge/stone/cobble/gravel with 75% rockweed cover. Rockweed was the only marine organism that was observed by DMR staff at the time of the site visits.

Abutters have commented that clams and marine worms are present at the project site and provided photographs of recreational clam digging along the shoreline of the cove. In addition, abutters have expressed concern that the proposed project may potentially impact the production of oysters at a nearby aquaculture facility.

The Department of Marine Resources (DMR) reviewed this aspect of the proposed project at its site visits on July 16, 2007 and August 9, 2007. DMR stated that the

proposed project should not result in any significant adverse impact to traditional fishing activity, recreation, navigation, riparian access, or shellfish production including oysters. While some clams and marine worms are likely present on the site, the replacement of the existing pier with the proposed, slightly larger commercial structure would not significantly impact their habitat, or any traditional fishing activity in the area.

Abutters have commented that the proposed project and its associated activities would impact the feeding habits of birds that frequent the cove at low tide. MDIFW conducted a site visit and reviewed the proposed project. MDIFW stated that there are no Essential or Significant Wildlife Habitats at the project site and that they do not anticipate that the proposed pier will create an unreasonable impact on wildlife in and around the Clark Cove area. MDIFW further recommended that tree and vegetation removal should be kept to an absolute minimum in order to maintain riparian wildlife habitat. The applicant has agreed to not remove any existing trees along the shoreline of the project site and that other vegetation removal will be limited to that which is necessary to site the pier and its associated access way and trap-chute.

Based on comments from DMR and MDIFW, the Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

6. WATER QUALITY CONSIDERATIONS:

The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

7. WETLANDS AND WATERBODIES PROTECTION RULES:

In order to construct a commercial pier, float, and ramp system, the applicant proposes to directly alter 6 square feet of intertidal area and 15 square feet of subtidal area. The applicant's proposal would indirectly alter 396 square feet of intertidal area and 1140 square feet of subtidal area due to shading effects on the coastal wetland.

A. Avoidance. Because the construction of the proposed pier will alter a portion of the coastal wetland, the permit application was analyzed under the Department's Wetlands and Waterbodies Protection Rules, Chapter 310. The Wetland Protection Rules interpret and elaborate on the Natural Resources Protection Act criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable as that term is used in the criteria in the statute. A proposed project's impacts would generally be found to be unreasonable if the project would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. An applicant must provide an analysis of alternatives to the project. The applicant submitted an alternatives analysis for the proposed project completed by LeBlanc Associates, Inc. and dated May 25, 2007 with the

latest revision date being May 22, 2008. The applicant considered the following alternatives:

1.) Continued Use of Mooring and Float at "The Gut". The applicant currently uses a mooring (Mooring #287) at a commercial docking facility known as "The Gut". This docking facility is located on the Damariscotta River, north of Rutherford Island. It is used by numerous other fishermen; however, this docking facility does not provide all tide access, and the applicant states that he must compete with other fishermen during times of high tide to enter and exit the facility. In addition, the applicant states that float associated with the mooring is not large enough to store the applicant's 600 traps. The applicant has stated that there are no other commercial facilities in the surrounding area that are able to support the applicant's commercial lobster fishing activities.

Abutters have stated the applicant should continue to use the existing mooring and float at the commercial docking facility located at "The Gut". They feel that this docking facility, including the applicant's existing mooring and float, provides adequate services that meet the needs of the applicant. The abutters submitted depth sounding data which demonstrates that the depth of water under the existing mooring and float at low tide is 13.1 feet. Thus, the abutters believe that this mooring is capable of accommodating the applicant's need for all tide access.

The applicant acknowledges that the existing mooring and float has a sufficient depth of water to moor a vessel during periods of high tide; however, he contends that this location is continuously congested with other commercial fisherman and their vessels. Thus, motoring through boat traffic at "The Gut" can frequently be difficult and time consuming. The applicant concluded that this existing site at the commercial launching facility does not fully accommodate the applicant's need for an adequate space for commercial work or servicing and repairing traps.

Abutters commented that the dimensions of the existing mooring at "The Gut" have been misrepresented by the applicant. Abutters assert that the size of the float measures 12 feet by 16 feet. While there may be a discrepancy as to the exact dimensions of the existing float, this discrepancy of size does not affect the analysis of whether the existing float meets the needs of the applicant for his commercial fishing activities such as servicing and loading traps.

2.) Use of Existing Commercial Pier Adjacent to Project Site. The applicant has considered the option of renting a slip, tender, and mooring space from the commercial operation that abuts the proposed project site. The abutters assert that the neighboring commercial pier is a suitable alternative location. One of the abutters is the current owner of the neighboring commercial pier, which currently serves four lobster fishermen and some aquaculture projects. The abutter has stated that the operation is capable of handling one more lobsterman and has offered his services to the applicant on a fee basis. The applicant states that the abutting commercial pier does not have the capacity to store, service, repair, or provide reasonable security and protection for his traps and gear.

3.) Use of an Existing Pier System at Jones Point. The applicant currently owns, jointly with other family members, a parcel of property that contains an existing pier. This property is located on Will Alley Road off Jones Point in the Town of South Bristol. The existing pier on this property was approved by the Department on April 8, 1986 in Department Order #L-13376-03-A-N. This pier is pile-supported and measures 10 feet wide by 120 feet long. Currently, there is no apparent ramp and float associated with this pier. The applicant owns a mooring (Mooring #9) that is situated in front of the pier. The applicant currently uses this site only during the off-season for lobster trap storage, service, and repair. The applicant determined that this pier, in its current state, does not meet his commercial lobster fishing needs. This pier is in a degraded state such that major repairs are warranted, and it also does not provide all tide access. The applicant states that this location can be hazardous to idle and motor his vessel due to currents. The applicant stated that the currents for this area can reach up to 4 to 5 knots with significant cross currents. The applicant argues that a submerged band of ledge outcrop, located in front of the pier, restricts the applicant's access and use of the site.

Abutters contend that this pier is a viable alternative to the proposed project and is more conveniently located in relation to the commercial docking facility at "The Gut" where the applicant currently sells and purchases goods. Abutters have suggested that by expanding the length of this permanent pier, the applicant would be provided with all tide access, all of the applicant's needs would be met, and environmental impacts to the coastal wetland would be less than the impacts anticipated by the proposed project. The abutters submitted an example of such expansion which includes an addition of 47 feet to the length of the pier, a 4 foot wide by 35 foot long ramp, and a 12 foot wide by 20 foot long float. The abutters calculated this example as having a direct impact of 6 square feet of subtidal area and an indirect impact of 850 square feet of subtidal area.

The abutters submitted data showing the velocity of the current at the Jones Point site as 0.24 knots, based on a depth sounding and subtidal survey taken over a 5.5 hour period on March 13, 2008. The abutters state that this site is not a dangerous location as suggested by the depth sounding data. In addition, the abutters submitted video data that shows the overall condition of the existing pier and the bottom substrate surrounding this site. The video data highlights the presence of Eelgrass (*Zostera marina*) and a soft, silt bottom which suggests that the area has a moderately slow moving current. The abutters assert that Eelgrass is presently located where the seasonal float of the proposed expansion would be located, and abutters feel that any impact to the Eelgrass can be mitigated by the use of a light-transmitting float.

The applicant submitted additional information regarding the feasibility of expanding the length of the existing pier. The applicant acknowledges that an expansion of the pier may provide all tide access. Due to the existing submerged ledge outcrop, the applicant believes that granite blocks would need to be placed around each piling to securely anchor the piles to the ledge. The applicant states that this would result in approximately 96 square feet of direct impact per piling set for a cumulative total of 250 square feet of

direct impact. The applicant submitted a letter, J.P. Marine Construction & Services, Inc., dated May 21, 2008, that confirms the applicant's assessment.

The applicant states that currently the existing pier extends beyond riparian property lines. Thus, the applicant argues that an expansion of the existing pier would create a greater intrusion beyond these riparian lines. The applicant argues that therefore he does not have title, right, or interest to file a permit application to expand the existing pier on this alternative site. In addition, the applicant believes that abutting property owners would be opposed to an extension and he would not be able to obtain their permission to extend the pier. In support of this argument the applicant submitted a graph, Exhibit 1B3 & 1B6 dated May 22, 2008, which displays extended riparian lines over the existing pier and extended riparian lines over a proposed expansion of the existing pier.

While this evidence raises questions about whether the applicant could demonstrate adequate title, right or interest to apply for an extension of this pier, that issue is not appropriate for a conclusive determination here, and it is not determinative. However, this uncertainty of title, right, or interest raises significant questions with the Department as to whether an expansion of this existing pier and its continued use is a practicable alternative.

Patches of Eelgrass are present in the area where the pier would need to be expanded as demonstrated by data submitted by abutters; the data showing its presence causes concern about impacts from possible construction of an extended pier in this location. There are no mapped Eelgrass beds of high, moderate, or low value according to Geographic Information Systems (GIS) mapping database. Nonetheless, the occurrence of Eelgrass at this site presents a concern. Eelgrass is a sensitive resource and habitat. It has many important functions such as shelter for juvenile fish from predation and wave action, a food source for a variety of shorebirds, nursery grounds for many species of shellfish and aquatic organisms, and a filter of inorganic nutrients from sediment and the water column. The Department, DMR, and MDIFW review all projects located in, on, or over Eelgrass beds no matter their formally rated value. The Department, DMR, and MDIFW discourage encroachment on Eelgrass beds and typically request applicants to avoid Eelgrass beds to the extent practicable due to their valuable nature.

The Department consulted with the Harbormaster of South Bristol regarding the conflicting information in the record on the issue of the rate of currents at this alternative site. The Harbormaster commented that the above referenced alternative site is located in an area semi-protected from wave energy, south of an area known as "The Narrows" on the Damariscotta River. At low tide, the substrate at this site is completely exposed all the way to a ledge outcrop. The Harbormaster further commented that the currents at this site can reach up to 4 or 5 knots on typical strong days. During very strong days, the current in "The Narrows" has been known to reach up to 7 knots for a short period of time. With regards to the proposed project site, the Harbormaster stated that the proposed project site is located in a cove that is protected from wave energy, and this cove experiences minimal current flows.

Based upon the applicant's evidence and the Harbormaster's experience and general knowledge of the alternative site and current velocities of the Jones Point alternative site, the Department finds the applicant's and Harbormaster's evidence to be credible.

When considering whether a single activity is reasonable in relation to the direct and cumulative impacts on the resource, the Department considers factors such as the degree of harm or benefit to the resource; the frequency of similar impacts; the duration of the activity and ability of the resource to recover; the proximity of the activity to protected or highly developed areas; traditional uses; the ability of the activity to perform as intended; public health or safety concerns addressed by the activity; and the type and degree of benefit from the activity (public, commercial, or personal).

The Department determined that if the applicant continued to make use of the facility known as "The Gut" or if he began to use the abutting commercial operation, environmental impacts would be minimal and limited to those associated with the increased or continued use of the commercial facilities. However, the applicant would continue to endure practical problems which result in significant limitations on his operations: crowding and competition with other fishermen for docking space, tidal access, and inadequate work space. Additionally, the applicant would have to pay variable annual fees to conduct his own commercial fishing operations.

Overall, with regards to discrepancies of current velocity, the Department has determined that credible evidence has been submitted that states that the current at the alternative site can be high at times, and credible evidence also suggests that the current is low at the site at times. Beyond the question of the difficulty due to swift currents at times, based primarily on the presence of Eelgrass, the Department finds that the existing pier on Jones Point is not a practicable alternative. Furthermore, after examining the evidence submitted by the applicant and abutters, the Department determined that an expansion of the existing pier to avoid a submerged ledge outcrop and Eelgrass would not result in a significantly less amount of coastal wetland impacts.

Commercial lobster fishing is considered a traditional use in the South Bristol community and in many coastal towns within the State. Accordingly, the overall purpose of the applicant's proposed project and associated activities is a traditional and water dependent use. Furthermore, numerous commercial activities, similar to the applicant's commercial fishing activities, were observed within the cove community during multiple site visits by Department staff. The resource has withstood impacts by these activities for many decades and has maintained its designation as an optimal resource for shellfish productions and the larger area as a desirable destination for recreational users, which demonstrates the resource's capability to recover from such impacts. Based upon these considerations, weighing the small impacts of the construction of a proposed pier system on this site with the much superior practicability of the proposed project over the alternatives, and the fact that the project purpose is to support a traditional use of the wetland, the Department finds that the overall proposed project will not have an

unreasonable impact to functions and values of the resource nor affect the existing uses within Clark Cove.

B. Minimal Alteration. The amount of coastal wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant surveyed the area with a depth finder and determined that the depth of water at the end of the float at mean low water would be no greater than four feet. The applicant's lobster fishing boat requires a draft of 3.5 to 4 feet, thus the length of the pier system has been minimized to the shallowest depth at the end of the float to maintain all-tide access. The applicant initially considered a pier width of up to 16 feet; however, in his alternatives analysis, the applicant concluded that the overall goal of his project could still be met by reducing the width of the pier to 12 feet. The applicant's proposal to incorporate the footprint of the existing recreational pier in the construction of the proposed pier system minimizes the impacts of the proposed replacement pier to the coastal wetland. As a result, the loss of wetland functions and values is relatively small, as described in sections 3 and 5 above.

To the extent necessary to service the applicant's lobster fishing business, abutters contend that the proposed project would inevitably be used by more than one lobsterman due to its size. However, the Department's record of the application provides no credible evidence that the applicant's plan and project purpose includes the use of the pier system by multiple users.

C. Compensation. In accordance with Chapter 310 Section 5(C), compensation is required to achieve the goal of no net loss of coastal wetland functions and values. However, the applicant does not propose to fill 500 square feet or more of intertidal or subtidal area, which is the threshold over which compensation is generally required. The proposed project is not anticipated as having an adverse impact on marine resources or wildlife habitat as evaluated by DMR and MDIFW. Therefore, the Department determined that compensation is not required.

The Department finds that the applicant has avoided and minimized wetland impacts to the greatest extent practicable, and that, in light of the alternatives available, their impacts, and the overall purpose of the project, the proposed project will not result in unreasonable impacts to the resource.

8. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department **APPROVES** the above noted application of **DAVID E. RICE** to construct a pile supported commercial pier with a seasonal ramp and float, combination access stairs and trap chute, platform, and equipment shed, **SUBJECT TO THE ATTACHED CONDITIONS**, and all applicable standards and regulations:

- 1. Standard Conditions of Approval, a copy attached.
- 2. The applicant shall take all necessary measures to ensure that his activities or those of his agent do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
- 3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be

construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

4. The applicant shall insure that the seasonal ramp and float are stored on the permanent pier or outside of the coastal wetland.
5. No trap storage will be permitted on the permanent pier.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

BC/ATS#68633/L23698AA



Natural Resource Protection Act (NRPA) Standard Conditions

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET. SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Initiation of Activity Within Two Years. If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the applicant will be able to begin the activity within two years form the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- F. Reexamination After Five Years. If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- G. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- H. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- I. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

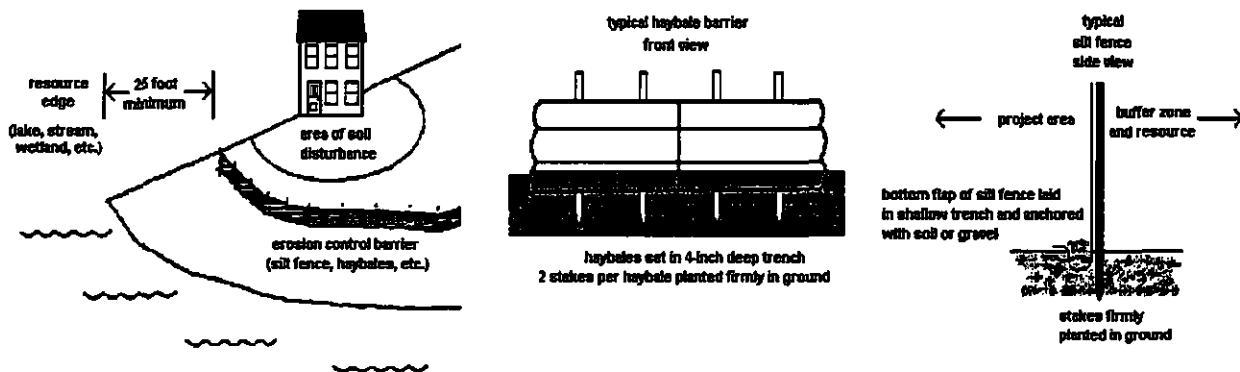
Revised (4/92/DEP LW0428

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Erosion Control for Homeowners

Before Construction

1. If you have hired a contractor, make sure you discuss your permit-by-rule with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is, and where it is located. Most people can identify the edge of a lake or river. However, the edges of wetlands are often not so obvious. Your contractor may be the person actually pushing dirt around, but you are both responsible for complying with the permit-by-rule.
2. Call around to find where erosion control materials are available. Chances are your contractor has these materials already on hand. You probably will need silt fence, hay bales, wooden stakes, grass seed (or conservation mix), and perhaps filter fabric. Places to check for these items include farm & feed supply stores, garden & lawn suppliers, and landscaping companies. It is not always easy to find hay or straw during late winter and early spring. It also may be more expensive during those times of year. Plan ahead -- buy a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the soil-disturbance activity.
4. If a contractor is installing the erosion control barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level or elevation across the land slope, whenever possible. This keeps stormwater from flowing to the lowest point along the barrier where it can build up and overflow or destroy the barrier.



During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops hitting the bare ground that makes the soil begin to move downslope with the runoff water, and cause erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. You or your contractor then need to figure out what can be done to prevent more soil from getting past the barrier.
3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.